

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCO RASHID,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 2:23-cv-1826-CSK

ORDER ON PARTIES' CROSS MOTIONS
FOR SUMMARY JUDGMENT

(ECF Nos. 13, 17)

Plaintiff Marco Rashid seeks judicial review of a final decision by Defendant Commissioner of Social Security denying an application for supplemental security income.¹ In the summary judgment motion, Plaintiff contends the final decision of the Commissioner contains legal error and is not supported by substantial evidence. Plaintiff seeks a remand for further proceedings. The Commissioner opposes Plaintiff's motion, filed a cross-motion for summary judgment, and seeks affirmance.

For the reasons below, Plaintiff's motion is DENIED, the Commissioner's cross-motion is GRANTED, and the final decision of the Commissioner decision is AFFIRMED.

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¹ This action was referred to the magistrate judge under Local Rule 302(c)(15) and proceeds on the consent of all parties. (ECF Nos. 9, 10, 11.)

1 **I. SOCIAL SECURITY CASES: FRAMEWORK & FIVE-STEP ANALYSIS**

2 The Social Security Act provides benefits for qualifying individuals unable to
3 “engage in any substantial gainful activity by reason of any medically determinable
4 physical or mental impairment[.]” 42 U.S.C. § 423(d)(1)(a). When an individual (the
5 “claimant”) seeks Social Security disability benefits, the process for administratively
6 reviewing the request can consist of several stages, including: (1) an initial determination
7 by the Social Security Administration; (2) reconsideration; (3) a hearing before an
8 Administrative Law Judge (“ALJ”); and (4) review of the ALJ’s determination by the
9 Social Security Appeals Council. 20 C.F.R. § 416.1400(a).

10 At the hearing stage, the ALJ is to hear testimony from the claimant and other
11 witnesses, accept into evidence relevant documents, and issue a written decision based
12 on a preponderance of the evidence in the record. 20 C.F.R. § 416.1429. In evaluating a
13 claimant’s eligibility, the ALJ is to apply the following five-step analysis:

14 **Step One:** Is the claimant engaged in substantial gainful activity? If yes,
15 the claimant is not disabled. If no, proceed to step two.

16 **Step Two:** Does the claimant have a “severe” impairment? If no, the
17 claimant is not disabled. If yes, proceed to step three.

18 **Step Three:** Does the claimant’s combination of impairments meet or
19 equal those listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1 (the “Listings”)?
20 If yes, the claimant is disabled. If no, proceed to step four.

21 **Step Four:** Is the claimant capable of performing past relevant work? If
22 yes, the claimant is not disabled. If no, proceed to step five.

23 **Step Five:** Does the claimant have the residual functional capacity to
24 perform any other work? If yes, the claimant is not disabled. If no, the
25 claimant is disabled.

26 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995); 20 C.F.R. § 416.920(a)(4). The
27 burden of proof rests with the claimant through step four, and with the Commissioner at
28 step five. *Ford v. Saul*, 950 F.3d 1141, 1148 (9th Cir. 2020). If the ALJ finds a claimant
not disabled, and the Social Security Appeals Council declines review, the ALJ’s
decision becomes the final decision of the Commissioner. *Brewes v. Comm'r*, 682 F.3d
1157, 1161-62 (9th Cir. 2012) (noting the Appeals Council’s denial of review is a non-
final agency action). At that point, the claimant may seek judicial review of the

1 Commissioner's final decision by a federal district court. 42 U.S.C. § 405(g).

2 The district court may enter a judgment affirming, modifying, or reversing the final
3 decision of the Commissioner. *Id.* ("Sentence Four" of § 405(g)). In seeking judicial
4 review, the plaintiff is responsible for raising points of error, and the Ninth Circuit has
5 repeatedly admonished that the court cannot manufacture arguments for the plaintiff.
6 See *Mata v. Colvin*, 2014 WL 5472784, at *4 (E.D. Cal, Oct. 28, 2014) (citing *Indep.*
7 *Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (stating that the court
8 should "review only issues which are argued specifically and distinctly," and noting a
9 party who fails to raise and explain a claim of error waives it).

10 A district court may reverse the Commissioner's denial of benefits only if the ALJ's
11 decision contains legal error or is unsupported by substantial evidence. *Ford*, 950 F.3d.
12 at 1154. Substantial evidence is "more than a mere scintilla" but "less than a
13 preponderance," i.e., "such relevant evidence as a reasonable mind might accept as
14 adequate to support a conclusion." *Id.* (citations omitted). The court reviews evidence in
15 the record that both supports and detracts from the ALJ's conclusion, but it may not
16 affirm on a ground upon which the ALJ did not rely. *Luther v. Berryhill*, 891 F.3d 872,
17 875 (9th Cir. 2018). The ALJ is responsible for resolving issues of credibility, conflicts in
18 testimony, and ambiguities in the record. *Ford*, 950 F.3d at 1154. The ALJ's decision
19 must be upheld where the evidence is susceptible to more than one rational
20 interpretation, or where any error is harmless. *Id.*

21 **II. FACTUAL BACKGROUND AND ALJ'S FIVE-STEP ANALYSIS**

22 On August 13, 2020, Plaintiff applied for supplemental security income under Title
23 XVI of the Social Security Act, alleging he has been disabled since his application date.
24 Administrative Transcript ("AT") 190 (available at ECF No. 12). Plaintiff claimed disability
25 due to mental health issues; suicidal tendencies; need for surgery on his back, foot, and
26 anus; anal fissure; pain; discomfort; and mental breakdowns. See AT 61. Plaintiff's
27 application was denied initially and upon reconsideration; he sought review before an
28 ALJ. AT 82, 105, 120. On March 4, 2022, Plaintiff appeared at a remote hearing before

1 an ALJ, which quickly adjourned because Plaintiff stated he wished to obtain counsel.
2 AT 54-59. On June 24, 2022, Plaintiff appeared with a representative at a remote
3 hearing before the ALJ, where Plaintiff testified about his impairments and where a
4 vocational expert testified about hypothetical available jobs. AT 34-53.

5 On July 6, 2022, the ALJ issued a decision finding Plaintiff was not disabled. AT
6 10-26. At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity
7 since August 13, 2020. AT 12. At step two, the ALJ determined Plaintiff had the following
8 severe impairments: degenerative disc disease of the lumbar spine, depressive
9 disorder, and anxiety disorder. AT 13. The ALJ found the evidence surrounding Plaintiff's
10 asthma, right foot pain prostatitis, pelvic floor dysfunction, and rectal pain showed these
11 issues had no more than a minimal effect on his ability to carry out basic work activities.
12 AT 13-14. Thus, these conditions were deemed non-severe. *Id.*

13 At step three, the ALJ found Plaintiff's combination of impairments did not meet or
14 medically equal any Listing. AT 14 (citing 20 C.F.R Part 404, Subpart P, Appendix 1).
15 For Plaintiff's physical impairments, the ALJ considered Listings 1.15 (nerve root spinal
16 disorder), 1.16 (lumbar spinal stenosis), 1.18 (major joint abnormality), 3.03 (asthma),
17 5.02 (gastrointestinal hemorrhaging), and for his mental impairments, Listings 12.04
18 (depression) and 12.06 (anxiety). The ALJ applied the "Paragraph B" criteria² for the
19 mental impairments, finding Plaintiff moderately limited in interacting with others, but
20 finding no limitations in understanding, remembering, or applying information; in
21 concentrating, persisting or maintaining pace; or in adapting or managing oneself. AT
22 14-16. In making these findings, the ALJ noted conflicts in the record between Plaintiff's
23 testimony, the medical evidence, and the medical opinions in the record. *Id.*

24 _____
25 ² "Paragraph B" lists four categories for evaluating how a claimant's mental disorders
26 limit their functioning: understanding, remembering, or applying information; interacting
27 with others; concentrating, persisting, or maintaining pace; and adapting or managing
28 oneself. To be found disabled under the Paragraph B categories, the mental disorder
must result in an "extreme" limitation of one, or "marked" limitation of two, of the four
areas of mental functioning. See 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00 Mental
Disorders, sub. A.2.b.

1 The ALJ then found Plaintiff had the residual functional capacity to perform light
2 work (20 C.F.R. § 416.967(b)), except that Plaintiff could only:

3 Occasionally crawl and climb ladders, ropes, or scaffolds;
4 frequently balance, stoop, kneel, crouch, and climb ramps or
5 stairs; occasionally interact with the public, in the work
setting, and with coworkers and supervisors; and no tandem
tasks involved.

6 AT 16. In crafting this residual functional capacity, the ALJ stated he considered
7 Plaintiff's statements from his 2020-2021 disability and function reports and from the
8 June 24, 2022 hearing. AT 17-18 (citing AT 38-48, 239, 258-66, 286, 299). The ALJ also
9 considered the medical evidence in the record from 2019-2022, the medical opinions
10 from the examining doctors, and the prior administrative medical findings. See AT 18-24.

11 Based on the residual functional capacity, the ALJ determined at step four that
12 Plaintiff was incapable of performing past relevant work. AT 24. However, at step five,
13 the ALJ found Plaintiff could perform other jobs requiring light exertion and SVP 2,³
14 including: (i) garment sorter, 54,500 jobs nationally; (ii) electronics worker, 32,900 jobs
15 nationally; and (iii) "assembler, small products I," 305,600 jobs nationally. AT 25. The
16 ALJ found Plaintiff not disabled during the relevant period. AT 26.

17 On June 27, 2023, the Appeals Council rejected Plaintiff's appeal. AT 1-3. Plaintiff
18 then filed this action requesting judicial review of the Commissioner's final decision, and
19 the parties filed cross-motions for summary judgment. (ECF Nos. 1, 13, 17.)

20 **III. ISSUES PRESENTED FOR REVIEW**

21 Plaintiff contends the ALJ erred by: (A) failing to offer clear and convincing
22 reasons for rejecting the more severe aspects of his symptom testimony; and (B) failing
23 to develop the record regarding a January 2022 blood test. (ECF No. 13.) Plaintiff seeks
24 a remand for further proceedings. (*Id.*)

25 ³ "Light" in the ALJ's step-five determination references light work, as defined by
26 20 C.F.R. § 416.967(b).

27 "SVP" is "specific vocational preparation," defined as "the amount of lapsed time
28 required by a typical worker to learn the techniques, acquire the information, and
develop the facility needed for average performance in a specific job-worker situation."
See DOT, App. C, § II, available at 1991 WL 688702.

1 The Commissioner argues the ALJ: (A) reasonably evaluated Plaintiff's
2 subjective symptom testimony; and (B) had no duty to develop the record further. (ECF
3 No. 17.) Thus, the Commissioner contends the decision as a whole is free from legal
4 error, is supported by substantial evidence, and should be affirmed. (*Id.*)

5 **IV. DISCUSSION**

6 **A. Subjective Symptom Testimony**

7 1. Legal Standards

8 A claimant's statements of subjective symptoms alone are insufficient grounds to
9 establish disability. 20 C.F.R § 416.929(a). If an ALJ was required to believe every
10 allegation of pain or impairment, disability benefits would run afoul of the Social Security
11 Act and its purpose. *Treichler v. Comm'r*, 775 F.3d 1090, 1106 (9th Cir. 2014). In
12 evaluating the extent to which an ALJ must credit the claimant's report of their
13 symptoms, the Ninth Circuit has stated:

14 First, the ALJ must determine whether the claimant has presented
15 objective medical evidence of an underlying impairment which could
16 reasonably be expected to produce the pain or other symptoms
17 alleged. In this analysis, the claimant is not required to show that her
18 impairment could reasonably be expected to cause the severity of the
symptom she has alleged; she need only show that it could
reasonably have caused some degree of the symptom. Nor must a
claimant produce objective medical evidence of the pain or fatigue
itself, or the severity thereof.

19 If the claimant satisfies the first step of this analysis, and there is no
20 evidence of malingering, the ALJ can reject the claimant's testimony
about the severity of her symptoms only by offering specific, clear and
convincing reasons for doing so. This is not an easy requirement to
meet: The clear and convincing standard is the most demanding
required in Social Security cases.

23 *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017) (quotations omitted). The ALJ's
24 reasons for discounting or rejecting a claimant's subjective symptom testimony must be
25 sufficiently specific to allow a reviewing court to conclude the adjudicator did not
26 arbitrarily discredit a claimant's testimony. *Brown-Hunter v. Colvin*, 806 F.3d 487, 493
(9th Cir. 2015) (quotations omitted). Examples of "specific, clear and convincing
27 reasons" for discounting or rejecting a claimant's subjective symptom testimony include:
28

1 prescription of conservative treatment, *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir.
2 2007); inconsistencies between the plaintiff's testimony and conduct (including daily
3 activities), *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005); whether the alleged
4 symptoms are consistent with the medical evidence of record, *Rollins v. Massanari*, 261
5 F.3d 853, 857 (9th Cir. 2001); or an unexplained or inadequately explained failure to
6 follow a prescribed course of treatment, *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir.
7 1991). A lack of corroborating, objective medical evidence alone is insufficient grounds
8 for an ALJ to discount subjective symptoms; however, it is a factor the ALJ may
9 consider. *Rollins*, 261 F.3d at 857 (citing 20 C.F.R. § 404.1529(c)(2)).

10 2. Symptom Testimony Regarding Physical Impairments

11 Regarding Plaintiff's statements that he had disabling physical pain such that he
12 could not work, the ALJ began by summarizing Plaintiff's statements in his 2020-2021
13 disability and function reports and at the June 24, 2022 hearing. AT 17-18. Plaintiff
14 asserted he "was not able to sit for more than 10 minutes or stand or drive more than 10
15 minutes" because he had "chronic pain 24 hours a day" in his spine. AT 286. Plaintiff
16 also stated he could not wear pants, shoes, or socks because of his legs going numb
17 from the deteriorating discs, pelvic dysfunction, anal fissure, and unbalanced hips. *Id.*
18 Plaintiff asserted he had muscle spasms, nerve damage, and walked slow with a twitch,
19 had to constantly change position due to pain, and had to use a cane when the pain
20 made it hard to stand. AT 259, 265, 299. Plaintiff reasserted many of these things at the
21 June 24, 2022 hearing, adding he could only "hold one grandchild at a time" (15 pounds
22 and 12 pounds). AT 41-46. Plaintiff stated he was prescribed baclofen and gabapentin
23 for pain, and he confirmed that surgery and epidural injections had been recommended
24 but were delayed due to the COVID-19 pandemic. AT 42. The ALJ found Plaintiff's
25 symptoms could reasonably be expected to cause the alleged symptoms, but the
26 "intensity, persistence and limiting effects of these symptoms are not entirely consistent
27 with the medical evidence and other evidence in the record for the reasons explained in
28 this decision." AT 18.

1 First, the ALJ properly discounted Plaintiff's symptom testimony by noting the
2 conflicts between his statements and the objective medical evidence. AT 18. The ALJ
3 cited records showing Plaintiff had "multilevel disc herniations without high grade spinal
4 stenosis, moderate narrowing of the right L4-L5 foramen, and possible impingement
5 upon the extraforaminal portion of the left L3 nerve sleeve" in June 2019 and August
6 2020. AT 492, 496. At a December 31, 2019 exam, Plaintiff reported 10/10 pain in his
7 spine, buttock, and thigh, and the examiner confirmed lumbar tenderness and pain with
8 motion, positive facet loading, and positive straight leg raise bilaterally. AT 1006-08.
9 However, this exam also found strength of 4+/5, intact reflexes and normal gait. AT
10 1008. Other exams of Plaintiff's spine from 2020-2022 confirmed spinal tenderness with
11 spasms and reduced range of motion (AT 538, 934), but also full strength in his hips and
12 legs, negative straight leg raising, intact sensation and reflexes, and normal gait (AT
13 541, 544, 547, 550, 556, 564, 569, 576, 891, 934, 970). Plaintiff was prescribed anti-
14 inflammatory medication and pregabalin (Lyrica) in December 2019, and subsequently
15 reported reduced pain of 6/10 in February 2020, December 2020, and February 2021.
16 AT 999-1003, 1008. Records in 2022 showed moderate foraminal narrowing extending
17 into Plaintiff's spine at L1- L5, mild narrowing at L5-S1, and facet effusions at L2-L4. AT
18 1014. The ALJ also noted Plaintiff's mentioning of sensory neuropathy to his providers,
19 but noted the exams showed Plaintiff's sensation was intact. AT 19 (citing AT 541, 544,
20 547, 550, 556, 564, 891, 1004, 1008).

21 Additionally, the ALJ noted the results of a November 18, 2020 exam performed
22 by Dr. Shahid Ali, M.D., which showed Plaintiff could sit, stand, walk, and perform other
23 postural activities without difficulty. AT 842-45. This included that Plaintiff was able to
24 walk into the exam room without assistance, got on and off the exam table without
25 difficulty, and could take his shoes off without difficulty. AT 842. Dr. Ali opined Plaintiff
26 could lift/carry at the medium level (50 pounds occasionally and 25 pounds frequently);
27 had no limitation sitting, standing, or walking; could frequently climb, balance, stoop, and
28 kneel; and never crouch or crawl. *Id.* The ALJ found this opinion partially persuasive,

1 adopting most of Dr. Ali's opined limitations into the residual functional capacity, but
2 reducing the lift/carry limitations to the light level (20 pounds occasionally and 10 pounds
3 frequently) due to Plaintiff developing facet effusions and mild giveaway weakness in
4 2022. AT 22 (citing AT 1004, 1008, 1014). The ALJ also found partially persuasive the
5 opinion of Dr. J. Lane, M.D., expressed on March 11, 2021 during the reconsideration
6 stage. AT 23 (citing AT 96-98). The ALJ adopted Dr. Lane's opinion Plaintiff could
7 frequently crouch or crawl given the "reduction in postural maneuvers," and rejected Dr.
8 Lane's assignment of medium work for the same reasons as with Dr. Ali. AT 23. Plaintiff
9 did not challenge the ALJ's assessment of the medical opinions in the record, and so
10 waived any challenge to these findings. See *Mata*, 2014 WL 5472784, at *4.

11 The ALJ was within his authority to resolve the conflict between the medical and
12 opinion evidence, which supports some physical limitations at the light level, and
13 Plaintiff's testimony that he could only sit, stand, and walk for no more than 10 minutes
14 at a time; had to use a cane to walk; and could not wear pants, shoes, or socks due to
15 24 hour a day pain. See *Ford*, 950 F.3d at 1154. Objective medical evidence can be
16 cited when evaluating the severity of Plaintiff's testimony, and the ALJ did not err in
17 finding Plaintiff's stated severe limitations to be contradicted by the medical evidence in
18 the record. See *Rollins*, 261 F.3d at 857; see also *Marshall v. Saul*, 830 F. App'x 179,
19 181 (9th Cir. 2020) (finding clear and convincing reasons to reject the plaintiff's symptom
20 testimony where there was a "disjunction between his statements that [he] could not
21 walk and medical evidence showing that his gait was normal").

22 Plaintiff contends the ALJ's rationale on this point is not clear and convincing
23 because the ALJ relied too heavily on Dr. Ali's opinion and did not account for other
24 medical records. (ECF No. 13 at 10.) For support, Plaintiff points to medical records from
25 his pain management provider generated June 3, 2019, December 31, 2019, and
26 February 4, 2020 that Plaintiff argues demonstrates his increased physical impairments
27 and confirms Plaintiff's subjective complaints. See AT 1003-10. However, as noted
28 above, the ALJ took account of these records in rejecting Dr. Ali's (and Dr. Lane's)

1 assignment of medium work. See AT 22-23 ("I have further reduced the claimant's lifting
2 and carrying to the light level given the new imaging with some facet effusions and with
3 other exams showing mild giveaway weakness of 4+ out of 5.") (citing AT 1004, 1008,
4 1014). Thus, the Court finds the ALJ did not ignore the evidence cited by Plaintiff. See
5 *Wesselius v. Kijakazi*, 2021 WL 4948928, at *1 (9th Cir. Oct. 25, 2021) (stating an ALJ's
6 decision was not a result of "cherry-picking" where the ALJ's findings were supported by
7 a broad set of exams covering the entire relevant time period); cf. *Ghanim v. Colvin*, 763
8 F.3d 1154, 1164 (9th Cir. 2014) (finding error where the ALJ's decision did not account
9 for record "as a whole," but rather relied on "cherry picked" evidence).

10 Instead, the decision demonstrates the ALJ fulfilled his duty to address conflicts in
11 the record; the Court has no authority to reweigh Plaintiff's cited evidence to arrive at a
12 different conclusion. See *Ford*, 950 F.3d at 1154.

13 In addition to the medical evidence, the ALJ found Plaintiff's symptoms were not
14 as severe as he stated because his treatment "remained conservative" and because he
15 failed to take prescribed medications despite assertions he found some relief with those
16 medications. AT 20 (citing AT 999-1001). Plaintiff contends the ALJ failed to note that
17 Plaintiff did not want to become addicted to opiates, that his insurance would not cover
18 the Lyrica in February 2020, and that the COVID-19 pandemic delayed his ability to
19 receive epidural shots. (ECF No. 13 at 10.) However, the ALJ also cited as proof of
20 Plaintiff's conservative treatment his prescriptions of topical creams, muscle relaxants,
21 Tylenol, and gabapentin (AT 934, 971), his being referred to physical therapy (AT 896)
22 and home exercise (AT 935), and his reporting of moderate relief with adjustments to his
23 prescription regimen (AT 999). These were additional, permissible reasons for the ALJ to
24 reject the more limiting aspects of Plaintiff's symptom testimony. See *Parra*, 481 F.3d at
25 750-51 (prescription of conservative treatment); *Bunnell*, 947 F.2d at 346 (unexplained
26 or inadequately explained failure to follow a prescribed course of treatment).

27 Finally, the ALJ noted Plaintiff was able to do his personal care, fix simple meals,
28 and do household chores. AT 20 (citing AT 260, 842). Inconsistencies between a

1 plaintiff's testimony and daily activities is an additional permissible reason to reject
2 symptom testimony. See *Burch*, 400 F.3d at 680-81 (finding symptom statements
3 contradicted by the plaintiff's ability to care for her personal needs, cook, clean and
4 shop). While the ALJ's analysis on this point is cursory, it rationally supports the ALJ's
5 conclusion Plaintiff was not as limited as he asserted in his testimony. See *id.* at 681
6 (stating that while the ALJ's determination on daily activities "may also admit of an
7 interpretation more favorable to [the plaintiff], the ALJ's interpretation was rational" and
8 must be upheld where susceptible to more than one rational interpretation). Plaintiff did
9 not explicitly challenge the ALJ's findings in her opening brief, and so waived any
10 challenge on the ALJ's findings here. See *Mata*, 2014 WL 5472784, at *4.

11 In sum, the ALJ did not wholly discount Plaintiff's symptom testimony or deem him
12 able to perform any job in the national economy. Instead, the ALJ found Plaintiff was
13 limited to light work, with many additional physical limitations included in the residual
14 functional capacity. Under the regulations, Plaintiff's statements of subjective symptoms
15 alone are insufficient grounds to establish disability. 20 C.F.R § 416.929(a). The Court
16 finds the ALJ provided clear and convincing reasons for discounting the more severe
17 aspects of Plaintiff's symptom testimony regarding his physical impairments, such that
18 the Court does not find Plaintiff's testimony was arbitrarily discredited. See *Brown-*
19 *Hunter*, 806 F.3d at 493.

20 3. Symptom Testimony Regarding Mental Impairments

21 Regarding Plaintiff's statements that he could not work due to his disabling mental
22 impairments, the ALJ began by summarizing Plaintiff's statements in his 2020-2021
23 disability and function reports and at the June 24, 2022 hearing. AT 17-18. This included
24 Plaintiff's "wanting to give up on life" and having "mental break downs," as well as his
25 assertions that his walking impairments "affected his mind," that his physical pain caused
26 his depression and anxiety, and that these things interfered with his concentration. AT
27 47-48, 239, 299. Plaintiff stated he was "in the process of seeing a psychiatrist" but
28 ended his last psychiatric appointment in 2020 "because he could not concentrate due to

1 the pain." AT 42. Plaintiff stated he took Prozac and Trazodone to help him sleep. *Id.*
2 The ALJ found Plaintiff's symptoms could reasonably be expected to cause the alleged
3 symptoms, but did not find the "intensity, persistence and limiting effects of these
4 symptoms . . . entirely consistent with the medical evidence and other evidence in the
5 record for the reasons explained in this decision." AT 18.

6 First, the ALJ properly discounted Plaintiff's testimony by noting the conflicts
7 between his testimony and the medical record. AT 20. The ALJ noted Plaintiff's reporting
8 of suicidal ideation, anxiety, and depression in June 2020. AT 457. Plaintiff attended a
9 behavioral health appointment in August 2020, where he was "initially oppositional,"
10 anxious, sad, and discussed his history of depression and relationship problems. AT
11 524. However, the ALJ also noted Plaintiff and the therapist established rapport and
12 developed trust; Plaintiff presented as oriented with normal attention, concentration, and
13 intact memory; and the therapist referred Plaintiff to medication management. *Id.* At a
14 November 13, 2020 mental status exam, Plaintiff was cooperative, engaging with normal
15 speech, had linear/logical thought processes, intact abstraction and judgment, and
16 adequate attention, concentration, and memory. AT 835-38. The ALJ noted additional
17 records throughout 2021-2022 supporting the presence of anxiety and depression, but
18 also demonstrating normal memory, orientation, cognition, mood, and affect. AT 21
19 (citing AT 528, 553, 556, 891, 930, 934, 954, 957-58, 962, 967, 970). Plaintiff was
20 prescribed Prozac and Vistaril in November 2020. AT 849. In early 2022, Plaintiff told his
21 health provider he was not taking his prescribed medications, was not attending
22 counseling, and was given a crisis intervention resource list. AT 958.

23 Additionally, the ALJ noted the opinions from Drs. F. Mateus, M.D., and Anna
24 Franco, Psy.D., who reviewed Plaintiff's records in December 2020 and March 2021 at
25 the initial and reconsideration stages. AT 75-76, 92-94. These doctors opined Plaintiff
26 should be limited to occasional interaction with coworkers, supervisors, and the public,
27 but otherwise was not limited due to his mental impairments. *Id.* The ALJ adopted this
28 limitation into Plaintiff's residual functional capacity, finding the doctors' opinions

1 persuasive because of their cited support and consistency with the record. AT 23-24.
2 Plaintiff waived any challenge to the ALJ's findings on these medical opinions by failing
3 to address the issue in the briefing. See *Mata*, 2014 WL 5472784, at *4.

4 The ALJ was within his authority to resolve the conflict between the medical and
5 opinion evidence, which supports some mental limitations, and Plaintiff's statements that
6 he could not work due to his depression and anxiety, which he alleged was caused by
7 his physical pain, affected his mind, and interfered with his concentration. AT 47-48, 239,
8 299. Objective medical evidence can be cited when evaluating the severity of Plaintiff's
9 testimony, and the ALJ did not err in finding Plaintiff's stated severe limitations were
10 contradicted by the medical evidence. See *Rollins*, 261 F.3d at 857; see also *Tidwell v.*
11 *Saul*, 836 F. App'x 523, 525-26 (9th Cir. 2020) (finding in part that medical evidence
12 showing improvements in mental health undercut such expansive limitations that it was
13 "impossible" to work around others, he had difficulties concentrating and was unable to
14 follow instructions); *Gregg v. Astrue*, 2009 WL 3295117, at *4 (E.D. Wash. Oct. 13,
15 2009) (discounting the plaintiff's symptom testimony in part based on the medical
16 evidence because it was not consistent with the plaintiff's broad assertions she could not
17 work anymore due to worsening mental illness, nervousness around people, poor
18 memory, inability to focus, and experience of panic attacks).

19 Plaintiff contends the ALJ's rationale on this point is not clear and convincing
20 because other evidence supports the more severe aspects of his symptom testimony,
21 including records showing he only held down part-time jobs with accommodations for a
22 short time but quit, missed mental health appointments, clashed with staff at other
23 appointments, and often presented with severe depression. (ECF No. 13 at 10-11.)
24 However, as noted above, the ALJ took account of many of these records, finding
25 Plaintiff's depression and anxiety severe at step two and assigning a limitation of
26 occasional contact with others in the residual functional capacity. AT 13, 16. The Court
27 finds the ALJ did not ignore the evidence cited by Plaintiff, and did not "cherry pick" only
28 certain items in the record. See *Wesselius v. Kijakazi*, 2021 WL 4948928, at *1. The

1 decision demonstrates the ALJ fulfilled his duty to address conflicts in the record; the
2 Court has no authority to reweigh Plaintiff's cited evidence to arrive at a different
3 conclusion. *See Ford*, 950 F.3d at 1154.

4 In addition to the medical evidence, the ALJ noted that despite Plaintiff being
5 prescribed Prozac and Vistaril in November 2020 (AT 849), he stated in early 2022 that
6 he did not take these medications and did not attend counseling. AT 958. This was an
7 additional, permissible reason for the ALJ to reject the more limiting aspects of Plaintiff's
8 symptom testimony. *See Bunnell*, 947 F.2d at 346 (unexplained or inadequately
9 explained failure to follow a prescribed course of treatment).

10 In sum, the ALJ did not wholly discount Plaintiff's symptom statements or deem
11 him able to perform any job in the national economy. Instead, the ALJ found Plaintiff was
12 limited to light work in the residual functional capacity, including a restriction to
13 occasional interactions with others. AT 16. Under the regulations, Plaintiff's statements
14 of subjective symptoms alone are insufficient grounds to establish disability. 20 C.F.R
15 § 416.929(a). The Court finds the ALJ provided clear and convincing reasons for
16 discounting the more severe aspects of Plaintiff's symptom testimony regarding his
17 mental impairments, such that the Court does not find Plaintiff's testimony was arbitrarily
18 discredited. *See Brown-Hunter*, 806 F.3d at 493.

19 **B. Duty to Develop the Record**

20 Plaintiff also contends the ALJ erred by failing to develop the record regarding a
21 January 2022 blood test. (ECF No. 13.)

22 **1. Legal Standards**

23 An ALJ must "fully and fairly [to] develop the record and to assure that the
24 claimant's interests are considered." *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir.
25 2003). This includes the duty to develop the record when the evidence is ambiguous or
26 when the record is inadequate to allow for proper evaluation of the evidence. *Mayes v.*
27 *Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). The ALJ's duty to develop the record
28 exists even when the claimant is represented by counsel. *Tonapetyan v. Halter*, 242

1 F.3d 1144, 1150 (9th Cir. 2001).

2 2. Analysis

3 Plaintiff contends the ALJ failed to fully and fairly develop the record. (ECF No. 13
4 at 12-13.) Plaintiff cites a record from January 21, 2022 from Dr. El-Hadi Moulderres,
5 M.D., noting Plaintiff's blood work showed "positive ANA [antinuclear antibody]." AT
6 1017. Dr. Moulderres recommended a referral to a rheumatologist because he believed
7 Plaintiff's neuropathy was "related to most likely autoimmune disease." AT 1013. Plaintiff
8 notes the ALJ failed to assign any limitations for Plaintiff's neuropathy based on Dr.
9 Moulderres's referral and the blood test, and so argues had a duty to develop the record
10 further if the evidence was inadequate for a proper finding. The Court disagrees.

11 First, the ALJ noted Plaintiff's assertions to his health providers that he had
12 sensory neuropathy, and the ALJ specifically cited multiple records from April 2019
13 through February 25, 2021 showing Plaintiff's sensation was "intact." AT 19 (citing AT
14 541, 544, 547, 550, 556, 564, 891, 1004, 1008). This evidence does not demonstrate a
15 worsening of Plaintiff's sensory neuropathy, and the ALJ was not required to develop the
16 record further. See *DeLeon v. Kijakazi*, 2023 WL 8242132, at *9 (E.D. Cal. Nov. 28,
17 2023) (rejecting the plaintiff's argument where the evidence cited by the plaintiff
18 appeared cherry picked and did not show a worsening of the plaintiff's conditions, and
19 where the remainder of the record consistently showed stable conditions); *Martin v.*
20 *Colvin*, 2015 WL 3631623, at *10 (C.D. Cal. June 10, 2015) (finding that a physician's
21 recommendation for further testing did not create a duty to develop the record further
22 when the "extensive" record supported the ALJ's findings).

23 Second, while courts in this circuit have held the duty to develop the record exists
24 even when counsel represents the plaintiff, this is balanced against the principle that
25 counsel "must raise all issues and evidence at their administrative hearings in order to
26 preserve them on appeal." See *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999).
27 Plaintiff was represented by counsel at the June 24, 2022 hearing before the ALJ, as
28 well as during Plaintiff's appeal to the Appeals Council. See AT 3, 34. The blood test

1 issue and Dr. Moulderres's referral was not raised by Plaintiff at either proceeding.
2 Courts have found the plaintiff waives the issue under these circumstances. See
3 *Newbanks v. Berryhill*, 2017 WL 2889022, at *2 (C.D. Cal. July 6, 2017).

4 For these reasons, the Court finds the ALJ had no duty to develop the record
5 further concerning the January 2022 blood test and Dr. Moulderres's referral
6 recommendation.

7 **V. CONCLUSION**

8 Having addressed all of the points of error raised by Plaintiff, the Court finds the
9 ALJ's decision otherwise supported by substantial evidence in the record and free from
10 legal error. See *Ford*, 950 F.3d at 1148 (noting that a district court may reverse only if
11 the ALJ's decision "contains legal error or is not supported by substantial evidence").

12 **ORDER**

13 Accordingly, the Court ORDERS/RECOMMENDS:

14 1. Plaintiff's motion for summary judgment (ECF No. 13) is DENIED;
15 2. The Commissioner's cross-motion (ECF No. 17) is GRANTED;
16 3. The final decision of the Commissioner is AFFIRMED; and
17 4. The Clerk of the Court is directed to CLOSE this case.

18
19 Dated: September 25, 2024

20 
21 CHI SOO KIM
22 UNITED STATES MAGISTRATE JUDGE

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